XIIA

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Papers Connection with Pareshath Hill

Part - III

1888

Sub. - Historical, Geographical And Statistical Report | Pareshath Hill |

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PARESH PARESHNATH HILLS.

Government of West Bengal

Department

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Papers in connection with Pareshnath Hill, in the District of Hazaribagh, Bengal 1888, III Parts.

XIII-T-65

Abstracts

XIIA/65

No. 305.

From

LIEUTENANT-COLONEL C. H. GARBETT,
Deputy Commissioner of Hazaribagh.

To

R. BADDAM, Esq.,
Manager, Pareshnath Tea Estate,
Pareshnath.

Dated Hazaribagh, the 25th May 1888.
Issued 26th.

SIR,

I have just received orders from the Government of Bengal requesting to take immediate steps to put a stop to some pork butchery which, it has been reported to Government, you contemplate starting or undertaking. Be good enough to suspend operation, pending further orders and instructions from Government. It is feared that the matter will give offence to the Jains. Please also report what are the facts of the case, as I have not heard anything about the matter.

I have the honor to be,
SIR,
Your most obedient Servant,
C. H. GARBETT,
Deputy Commissioner.

(Exhibit B.)

Hazaribagh, June 29th 1888.

MY DEAR BADDAM,

Have you received any reply from Government on the subject of your "Piggery." I understand that you memorialized the Lieutenant-Governor. The Lieutenant-Governor considers that your proceedings are likely to hurt the feelings of, and give grave offence to, the Jains all over India. He considers what has occurred to be a "bad case," and has desired the District and Divisional authorities to do what they can to put an end to the business. As you are not an official the displeasure of the Government cannot be the same thing to you as it is to us, nevertheless, it is a serious matter for even private individuals to incur the displeasure of Government. Though, doubtless, there has been a great deal of exaggeration in the representations made by the Jains, your proceedings cannot but give offence to a considerable section of the people of India, a very serious consideration in these times of political strife and agitation, and I think you ought to put a stop to them. I trust therefore you will endeavour to meet us as far as you can and help us all you can to effect a settlement. I should like to have your views on the subject how far you will insist us what you are prepared to do, &c., &c.

Yours truly,
C. H. GARBETT.

No. 305.

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Yours truly,
C. H. GARBETT.

In the Court of the Deputy Commissioner of Hazaribagh.

1*st*.—Rai Dhanput Singh Bahadur, son of late Baboo Pertap Singh, caste Oswal, profession zemindary and banker, inhabitant of Baluchar, Zillah Murshedabad.

2*nd*.—Rai Boodh Sing Bahadur, son of late Babu Horruck Chund, caste Oswal, profession zemindary and banker, inhabitant of Azimgunj.

3*rd*.—Rai Buddri Das Bahadur, son of late Babu Kalkapersad, caste Srimal, profession jeweller, inhabitant of No. 69, Burtola Street, Calcutta.

4*th*.—Babu Heera Loll Johoory, son of late Babu Munna Loll Johoory, caste Oswal, profession jeweller, inhabitant of No. 38, Burtola Street, Calcutta.

5*th*.—Babu Sarabsookh Kootari, son of Birdhi Chund Kootari, caste Oswal, profession service, inhabitant of No. 67, Burtola Street, Calcutta.....*Plaintiffs.*

All of the Jain persuasion and on behalf of the Jain Setumbury Society.

versus

Raja Paresh Nath Singh, son of Raja Drip Nath Singh, caste Baghal Rajput, profession zemindary, inhabitant of Godi Palgunj, Pergunnah Kharagdiha, Sub-registry Karharbari, Zillah Hazaribagh....1st Mr. R. H. Baddam, son of Col. H. Baddam, residing at present at Pareshnath Hill, by occupation a tea-planter.....*Defendants.*

The abovenamed plaintiffs for themselves and on behalf of the Jain Situmbury Society state as follows:—

1*st*.—The sect of the Jains following the Situmbury faith, on whose behalf the plaintiffs institute this suit have, from very ancient time, long before the assumption of sovereignty by the British, during the native Government of Viceroys and representatives of Kings, held and do, to the present, hold exclusive and uninterrupted possession of the Hill Pareshnath and the plain below, situated in the District of Hazaribagh, Sub-Division Giridih, Pergunnah Kharagdiha, Thanna Dumri.

2*nd*.—The said sect of the Jains do possess and enjoy and use the said hill and the plain below as their place of worship, devotion and pilgrimage and they have built thereon temples and set up idols at their costs and as a matter of right to possess, enjoy and use the said hill and the plain below, they have obtained two Imperial grants of the Emperors of Delhi, wherein and whereby the right of possession and enjoyment and use of the said hill and the plain below, have been granted, conveyed and conferred unto the said sect of the Jains as distinct marks of royal favor and grace.

3*rd*.—Adjoining and near to the said hill and the plain below lies the zemindary of the first-named defendant who being a powerful zemindar of the Society and alleging himself to be generally in charge of the protection of the said hill and the plain below, used to harass the pilgrims by forcibly levying black-mail or tribute and by wrongfully appropriating the offerings made to the idols thereon and by reason of the said acts of hostility there have arisen,

from time to time, numerous suits, Civil and Criminal, between the said sect of the Jains and the siad first-named defendant.

4*th*.—In or about 1864, the managers and guardian of the said first-named defendant, who was then a minor, having forcibly carried away portions of the offerings from the lawful custody of the said sect of the Jains, were sued for the restoration of the same and the necessary determination of the respective rights of the said two parties as regards the offerings made to the idols on the said hill and the plain below, and the final decision whereof, given by the Judical Commissioner of Chotanagpore on the 17th May 1866, as will appear from certified copy thereof annexed and marked herewith, completely established the right of the said sect of the Jains to the possession of the said hill and the plain below and to the enjoyment of the offering made thereon.

5*th*.—In or about 1868, the said first-named defendant, after attaining majority, instituted a suit against the said sect of the Jains for the possession of the said hill and the plain below, and the said suit coming on in appeal before the Hon'ble High Court, was finally dismissed on the 25th June 1868.

6*th*.—With the progress of time, the relations between the said sect of the Jains and the said first-named defendant, being still in no better position and the said sect of the Jains finding it inconvenient, difficult and costly to maintain and carry on continuous feuds and disputes and the said first-named defendant being an influential zemindar of the neighbourhood and therefore powerful enough to molest with impunity the said sect of the Jains, an amicable settlement was entered into between the said sect of the Jains of the one part and the said first-named defendant of the other part, by the execution of one agreement (*Ikrar*) by Horruck Chand Golicha, describing himself as honorary manager, Jain Setumbury Society, in favor of the said first-named defendant, dated the 16th May 1872, wherein and whereby, amongst other things it was declared and provided (as will appear from a copy of the English translation by one of the sworn translators of the Hon'ble High Court) that upon the condition of annually tendering to the said first-named defendant, a certain stipulated sum of money, neither he, the said first-named defendant, nor his representatives and heirs shall at any time and in any way, prevent and hinder the pilgrims from going and putting up on the hill and performing the worship &c, religious acts at the temples or commit any sort of oppression within the Jain Setumbury temples or raise any quarrels with the Poojarees and other people of the Jain Situmbury Society, or interfere with them in the performance of their duties, and it was also declared and provided that if the said first-named defendant or his heirs break any of the conditions of the aforesaid agreement, he shall not (be entitled to) get the the sum so fixed and shall not be competent at any time to lay any claim in respect of the same.

7*th*.—The said agreement, dated the 16th May 1872, was followed by a second agreement, dated 21st September 1878, executed by the said Horruck Chand Golicha, describing himself as honorary manager, Jain Situmbury Society, in favor of the said first-named defendant, confirming and ratifying the said terms and conditions of the said first

mentioned agreement and on the said day, *i. e.* 21st September 1878, a counter-agreement was made and executed by the said first-named defendant in favor of the said sect of the Jains, wherein and whereby the said first-named defendant declared "now the annual income from the offerings at the aforesaid hills being fixed at the sum of Rs. 1,500, between me and the Jain Situmbury Society, I do of my free-will hereby declare that the Jain Situmbury Society are and shall be at liberty to appropriate and spend the whole of the offerings at the temples on the Paresnath Hill aforesaid, on payment of the sum of Rs. 1,500, annually to me, the declarant, my heirs and representatives. I my heirs and representatives shall have no power to interfere in any way in respect of the offerings aforesaid as long as annual sum so fixed is paid."

8*th*.—On the 14th October 1876, the said first-named defendant, alleging that tarof upper-pith Pahar Pareshnath appertains to Gadi Palgunj, granted a Pottah of permanent lease to the second defendant, conferring on him the right to select 2000 acres *i. e.*, English bighas out of the lands of the said hills and the plain below, and to use the same for any purpose that he, the said second defendant, may like.

9*th*.—The said second defendant, as the said sect of the Jains are informed and believe and therefore state, took the said Pottah with notice of the agreement aforesaid that exist between the said sect of the Jains and the said first-named defendant and a distinct and clear recital thereof is given and made in the para 8 of the said Pottah.

10*th*.—In pursuance of the said Pottah, he, the second defendant, has taken possession of the said 2000 acres *i. e.*, English bighas out of the lands of the hills and the plain below, and has set up thereon a manufactory of hog's lard, not only thereby trespassing on the lands belonging to and remaining in the possession of the said sect of the Jains and dispossessing them wrongfully out of their lawful right, but also desecrating the said place of worship, devotion and pilgrimage, creating a nuisance and wounding the religious feelings of the said sect of the Jains.

11*th*.—The said sect of the Jains, on whose behalf the plaintiffs institute this suit, are advised and humbly insist that the said first-named defendant in consideration of the said annual payment made to him undertook to perform certain duties but he has not possessed and does not possess any right of ownership on or over the lands of the said hill and the plain below, belonging to and remaining in the possession of the said sect of the Jains, whereby he is entitled to grant the said Pottah to the said second defendant out of the said land, and that the said Pottah by reason of being granted unlawfully and in derogation of the lawful rights of the said sect of the Jains, is invalid and ineffectual.

12*th*.—The said sect of the Jains are further advised and humbly insist that under the terms of the said two Imperial grants as well as agreeably to the common law of the country and also in accordance with the said agreements of which the second defendant had notice when he took the lease, he, the said second defendant, is not entitled to carry on the manufacture of hog's lard, in the lands of the said Hill Paresnath and thereby desecrate the said sacred place and wound the religious feelings of the said Jain sect.

13*th*.—The said sect of the Jains are also advised and humbly insist that the said agreements by their said terms and conditions effected only an amicable settlement so far as regards the settlement of the said offerings alone and that the said executant of the said agreements, the said Horruck Chund Golicha had no authority to bind the Jains by the concession of any other right except as to the consideration for the offerings only, and that the said first-named defendant, by the said act of unlawfully granting the said Pottah, has acted in contravention of and contrary to the said terms and conditions of the said agreement and that under the circumstances as aforesaid, the said sect of the Jains are no longer bound by the said agreements.

14*th*.—The said sect of the Jains further insist that the carrying on of the said manufacture of hog's lard by the said second defendant in the sacred lands of the said hill Paresnath, has the effect of deterring pilgrims from offering their devotion at the said hill and has created a nuisance repugnant to the feelings of the said Jains.

15*th*.—The said sect of the Jains consisting of numerous persons having the same interest in the present suit crave leave under Section 30 of the Civil Procedure Code to sue and to institute this suit on behalf of all persons so interested in the name of the above-named plaintiffs.

16*th*.—There being several remedies which the said sect of the Jains have and can enforce against the said defendants, the plaintiffs on behalf of the said sect of the Jains crave that leave may be given to them under section 43 of the Civil Procedure Code to omit the other remedies except those sought for in the present suit.

17*th*.—The land, the possession of which is claimed and in respect of which other relief is sought, being situated in the District of Hazaribagh, the present suit lies in this Court and the said causes of action as to the dispossession of the lands appertaining to the said hill and the plain below, arose from the date of knowledge of the fact of dispossession by the second defendant and the existence of the said manufactory of hog's lard *i. e.*, within a year or two before the institution of the present suit.

18*th*.—The plaintiffs on behalf of the said sect of the Jains pray as follows:—

I. For a declaration that the first-named defendant has no right to grant the said Pottah or any other Pottah on or over or out of the lands of the Pareshnath Hill and the plain below.

II. For a declaration that the Pottah granted by the first defendant to the defendant No. 2 is invalid and ineffectual.

III. For an ejectment against the second defendant and of the lands occupied by him and possession of the same by the plaintiffs.

IV. For a perpetual injunction against carrying on the manufacture of lard or any other trade offensive to the religious feelings of the Jains by the second defendant.

V. For such further and other relief as to this Court may seem meet. For the relief sought in this suit the plaintiffs value their claim at Rs. 12,000

(Sd.) Hari Charan Mittra, *Vakeel*.

We, Rai Dhanput Singh Bahadur, Rai Boodh Singh Bahadur, Rai Badridas Bahadur, Babu Heera Lal Johoory and Babu Sarabsookh Kooteri, the plaintiffs in the foregoing suit, on behalf of the Jain Situmbury Society, do hereby declare that what is stated therein is true to our knowledge except as to matters stated on information and belief and that as to those matters we believe them to be true. We sign this verification on the 29th September 1888, in the kootee of Bahadur Singh Pratap Singh and Rai Luchmiput Singh Bahadur, Barabazar Calcutta.

(Sd.) HARI CHARAN MITTRA,
Vakeel.

1-10-1888.

I write this verification at Calcutta.

(Sd.) Rai Dhanput Singh Bahadur.

I write this verification at Calcutta.

(Sd.) Rai Boodh Singh Bahadur.

I write this verification at Calcutta.

(Sd.) Buddridas.

I write this verification at Calcutta.

(Sd.) Heera Lall Johoory.

I write this verification at Calcutta.

(Sd.) Sarabsookh Kooteri.

Rai Dhanput Singh and others ... ... *Plaintiffs.*

versus

Raja Pares Nath Singh and others ... *Defendants.*

In the Court of the Deputy Commissioner of Zillah Hazaribagh.

I am Gulab Chund Pandey, son of Kunj Lal Pandey, by caste a Brahmin and by occupation a service-holder, at present resident of Madhuban, Perghanah Kharagdiha, Zillah Hazaribagh and a servant and General Agent of Rai Dhanput Singh Doogar Bahadur, one of the plaintiffs, and I make the following statements on oath :—

1. That from the time Rai Dhanput Singh, the master of the declarant, is the manager of the Jain Situmbary Society, I, the declarant live on his behalf in the *mujhli kothee*, situate on the Pares Nath hill, and look after the affairs of the said *kothee*, that I am fully aware of the affairs of the said hill and Madhuban, and that I look after the cases of my master, on his behalf, in the Hazaribagh District.

2. That a suit has been instituted on behalf of Rai Dhanput Singh, the master of the declarant and the other members of the Jain Situmbury Society against Raja Pares Nath Singh, inhabitant of Palgunge and Mr. Baddam, a resident of the Pares Nath hill, in which the claim is laid at Rs. 12,000.

3. That of the reliefs sought in the said suit, one is to the effect that a perpetual prohibitory order be issued on the defendant No. 2, that he may not prepare (melt) lard (hog's fat) or carry on such a trade as is contrary to the religious tenets of the Jains, or such as is calculated to wound the religious susceptibilities of the Jains.

4. That as it will take time for the hearing and disposal of the suit instituted by the plaintiff, the master of the declarant, and other members, and the time for the pilgrims to assemble at the said hill has come, and the defendant No. 2 is going on with preparing lard which is calculated to wound the religious feelings of the pilgrims of the Jain religion who will go on the said hill for the performance of their religious observances, it is therefore very necessary that a temporary injunction be issued under the provisions of Section 493 of the Civil Procedure Code, so that no interference be made in the performance of the religious ceremonies of the said pilgrims and their religious feelings may not be wounded.

The 1st October 1888.

IN THE COURT OF THE D..P. .. C.. MISSIONER,
SUB-JUDGE, HAZA .. AGH.

Regular Suit No. 26 of 1888.

Rai Dhanput Singh Bahadur and four others ... ... *Plaintiffs,*

versus

Raja Pareshnauth Singh and Mr. R. H. Baddam ... . *Defendants.*

To

MR. R. H. BADDAM,
Pareshnauth Hill.

Upon motion made unto this Court by Babu Hurry Charan Mittra and Madhubanund Bysack, pleaders for the abovenamed plaintiffs, and upon reading the petition of the said plaintiffs in this matter filed this day, and upon hearing the affidavit of Golap Parai in support thereof, this Court doth order that an injunction be awarded to restrain the Defendant Mr. R. H. Baddam from carrying on the manufacture of hog's lard or any other trade offensive to the religious feelings of the Jain Setumbury Society until the hearing of this cause or until the further order of this Court, and that you are hereby restrained from carrying on the manufacture of the lard &c., complained of until the hearing of this cause or until the further order of this Court.

Herein fail not.

Given under my hand and the Seal of this Court, this first day of October 1888.

(SD.) C. H. GARBET.

IN THE COURT OF THE DEPUTY-COMMISSIONER OF HAZARIBAGH.

No. 26 of 1888.

Rai Dhanput Singh Bahadur and others ... *Plaintiffs,*

versus

Raja Pareshnath Singh and R. H. Baddam... *Defendants.*

R. H. Baddam, one of the defendants above-named states as follows:—

1. That this defendant is advised and begs leave to submit that the plaintiffs having received no authority from the Situmbury sect of the Jains on whose behalf they purport to sue are not entitled to bring this suit.

2. That this defendant is advised and believes that the Situmbury sect of the Jains is not an organized body holding or capable of holding any property or capable of having or authorizing any persons to sue on its behalf in its collective capacity.

3. That this defendant submits that the plaint discloses no cause of action.

4. That this defendant submits that this suit is barred by the Law of Limitation governing suits in British India.

5. This defendant submits that on the 7th day of September 1874, Raja Pareshnath Singh, the first defendant in this suit granted a Pottah to one Mr. Peppe on certain conditions.

6. That on the 20th day of January 1876, Mr. Peppe assigned a moiety of his share to this defendant by two several deeds of assignment.

7. That on the 22nd day of March 1876, Mr. Peppe assigned three-eighths of his share to one Mr. Davis, and Mr. Davis, on the 24th day of January 1877, assigned the said three-eighths share to this defendant.

8. That on the 20th day of March 1876, Mr. Peppe assigned one-eighth of his share to one Mr. Tweede, and Mr. Tweede, on the 20th day of October 1876, assigned the said one-eighth share to this defendant.

9. That on the 14th day of October 1876, this defendant obtained a Mokurrery Pottah of the said 2000 acres of land from the said first defendant, whereby the said first defendant confirmed Mr. Peppe's agreement and also conferred on this defendant certain rights and privileges which had not been granted to the said Mr. Peppe.

10. That this defendant assigned three-sixteenth of his share in the said 2000 acres of land in November 1876 to Sidh Nath Singh, Tekait of Karharbari, and this defendant in December 1887 assigned four-sixteenth of his share to General Umhar Jung Bahadur, and these two assigns are still in possession of their respective shares.

11. This defendant submits that in consequence of the facts stated in para. 10 of this written statement, the plaint is bad for non-joinder of parties.

12. This defendant submits that he entered on the possession of a portion of the said 2000 acres of land as Mokurrery lessee before the said first defendant executed the agreement, dated the 21st day of September 1878, with Horruck Chund Golicha.

13. This defendant submits that the said first defendant was fully entitled to grant him the Pottah dated the 14th day of October 1876, and that this defendant had no notice of any charge or lien which might have existed on the said 2000 acres of land.

14. This defendant submits that under the Pottah dated the 14th day of October 1876, he has liberty to use the said 2000 acres of land in any manner he pleases.

15. This defendant submits that he carries on the manufacture of hog's lard at a place very far removed from the temple or Paresnath Hill, and is not within view of the people who go to the temple.

16. This defendant submits that he carries on his trade, that is, the manufacture of lard under circumstances which occasion no nuisance to any pilgrims and no desecration of any holy place.

17. This defendant submits that he has made a fair and lawful use of the said 2000 acres of land, and that this suit should be dismissed as against him with costs.

This defendant begs to file this written statement and to solicit that he may be allowed to file any additional or amended statement after perusing the statement which may be filed by defendant No. 1.

(Sd.) R. H. BADDAM,
13th December, 1888,
HAZARIBAGH.

I, R. H. Baddam, defendant, do declare that what is stated herein is true to my knowledge except as to matters stated on information and as to those matters I believe them to be true.

(Sd.) R. H. BADDAM,
13th December, 1888,
HAZARIBAGH.

Filed 14-12-1888.

No. 26 of 1888.

Rai Dhanput Sing Bahadur and others ... *Plaintiffs.*

versus

Rajah Paresnath Sing and others ... *Defendants.*

Written statement on behalf of Raja Paresnath Sing, Defendant No. 1, as follows :—

1. That the plaintiffs' claim in respect of the Pares Nath Hill and the lands below and around it, without giving any valuation and boundaries is improper. In such a case the plaint filed by the plaintiffs is fit to be rejected.

2. That the plaintiffs' allegation as to the possession over the Pareshnath Hill and the land at the foot of it, is utterly false and invented; from time immemorial the said hill and lands neither were nor are ever in possession of any one save and except the defendant No. 1 and his ancestors.

3. That the place of worship, comprised within the area of the said Pareshnath Hill proper, is a place of worship not only of the Situmbury sect of Jains but also of the Digumbury and other sects af Jains, that is to say, of all men possessing Jain religion and some other people. Those persons do only perform the religious duties but have nothing to do with the possession and profit of the Hill.

4. That of all the area around and below the said hill, there is only one place of worship of the Jains, namely, in mouzah Madhoobun.

5. That the temples situate on the Pareshnath Hill and at the foot of it, are not all of them erected by and belonging to Jains of the Situmbury sect, but they also contain the places of worship of and built by the Jains of the Digumbury and other sects. Accordingly in Madhoobun there are three kothees out of which only one kothee belongs to the plaintiffs' sect and two, to the other sects of Jains. Hence the plaintiffs who are only a section of the Jains can have no right to bring this suit nor are they legally competent to do so.

6. That the sanud (deed) alleged by the plaintiffs is fabricated and useless. No effect was ever given to it at any time, nor was it ever produced at a proper time or brought into operation since the rule of the British Government. The said hill is from the ancient time situated within Pergunnah Kharogdiha in mehal Ago, and the Lakhraj properties of the aforesaid Pergunnah were registered at the beginning of the rule of the British Government. The same minhai Lakhraj mehals of the entire Pergunnah aforesaid do exist in the collectorate. Nothing is recorded therein with reference to the Hill.

7. That the Roadcess Act has come into force since 1873 A. D. No map or any Roadcess return was ever put in on behalf of any of the Jains.

8. That the plaintiffs' allegation in para. 3 of their plaint with reference to the zemindary of defendant No. 1

is false. Almost on all sides around the said hill the villages of defendant No. 1 are situated. The hill in question is comprised within and belongs to Gadi Palgunj, the Zemindary of the said defendant, and there is only on one corner the zemindary Katrass and Nowagúrh, both the aforesaid zemindars are the branches of the family of the said defendant.

9. That before the defendant No. 1 became owner, no dispute was ever set up in respect of the hill in question on the part of any member of the Jains, when the said defendant became owner he was a minor, and his zemindary came into the hands of the Court of Wards. At that time the profits of the hill belonged to the defendant's mother. During that time a suit was brought on behalf of Poorun Chund Golicha, the manager of the establishment of the Situmbury sect of Jains for having forcibly seized certain articles offered to the deity and a decree obtained for the value of the said articles. Having been successful in that suit in which the present defendant was not concerned they began to set up disputes. Eversince then they have been making attempts and raising litigations in order to gain the hill in question but have never been successful. The previous cases to which the plaintiffs refer were subsequent to the suit above alluded to.

10. That the plaintiffs' statement about the dismissal of plaintiffs' claim by the High Court on the 25th June 1868, is untrue, as will appear on perusal of the decision. That decision cannot affect the merits of the suit.

11. That by the ekrarnamas dated the 16th May 1872 and 21st September 1878, any agricultural act and settlement are not prevented; so the tea-garden existing on the hill was first settled with Mr. G. T. Peppe on the 2nd September 1874. Hence the tea-garden of the said Mr. Peppe began immediately and he used to pay rent to the defendant. Afterwards the said Mr. Peppe sold his garden to defendant No. 2. Then only owing to the term, of the previous settlement being disagreeable to the parties the second settlement was made in October 1876 by altering some of the conditions but in reality upholding the former settlement. Hence the allegation that the settlement was made for the first time on the 14th October is incorrect and made with an object to escape from limitation. Moreover at the time of the last ekrarnama (agreement) of the former manager, no objection or question was raised in respect of the tea-garden.

12. That a long time ago upon the Pareshnath Hill, nearer to the temples standing on the said hill, lands were taken from defendant No. 1 and barracks and bungalow erected by the Government, again the said barracks and bungalow were sold by the Government to defendant No. 1 in consequence of the said barracks and bungalow standing on the said defendant's land, and again a bungalow was taken from the said defendant and formed into a Dák-bungalow, which does still exist.

13. That when the said bungalow was in the possession of defendant No. 1, one Mr. Kontual took it on lease from him and established a hotel; and in 1867 he also took a settlement of 5 bighas of land situate on the Pareshnath Hill and having retained the same in possession till 1280

Fusli, continued to pay rent and subsequently having become an insolvent gave it up. He had also taken from the defendant No. 1, land at the foot of the said hill on the southern side and built a bungalow; on the bungalow of Mr. Kontual being sold, it was purchased by Mr. Bourgy and from the latter it was bought by Rai Luchmiput Singh Bahadur, brother of plaintiff No. 1, who subsequently abandoned it to defendant No. 1, whereby the said spot again came into the hands of defendant No. 1.

14. That when in 1872 and 1873, the public road was built from Giridi to Dumri after the opening of the Railway up to Giridi; a road having sprung out from the Dumri-Giridi road was prepared by Government which passed through Mouzah Madhubun up to the Pareshnath Hill; all the land occupied by that road was taken from the defendant No. 1.

15. That in 1860-61 a revenue survey was made by Government of Pergunnah Kharagdiha; even then there was no trace of any right of any sect of the plaintiffs.

16. That in 1847, Regulation II, was brought into force in respect of the villages around the hill in question. There was also the same case then.

17. That the profits of the forest of the entire hill in question have all along been in the hands and possession of defendant No. 1, and the said defendant is in every way competent to settle the lands of the hill and the villages around and adjoining to it for purposes of cultivation for tea and coffee plantation and for other uses.

18. That for the circumstances set forth above, it would appear that the plaintiffs' claim is wholly unfounded and barred by limitation.

19. That no improper act has been done on the part of defendant No. 1; on the contrary he is a friend to the religion of the Jain Community. There is also place of worship of the Jain religion in the house of the defendant; before the dispute arose all the Jains used to visit the same for the purpose of worshipping and obtaining *Sooful* (blessing) and even to the present time all the members of the Jain Community save and except a few members of the sect in league with the plaintiffs, visit the spot annually.

20. That the settlement with defendant No. 2, which retains the terms of the settlement with Mr. Peppe has not been made with an object to do any act contrary to the Jain religion, nor would defendant No. 1 have done so for the sake of his religion. If the defendant No. 2 has done an improper act, there would be no objection to it being stopped on consideration by the Court.

21. That it is manifest that since 1863, until very recently Poorun Chund Golicha and after his death Horruck Chund Golicha was the manager and in possession of the premises and place of worship appertaining to the religion of the Situmbury sect of the Jains, so that nearly 6 years ago the plaintiff No. 1 is the manager in the place of the aforesaid Horruck Chund Golicha and they have been carrying out the conditions of the settlement.

22. That the plaintiff No. 1 has a personal knowledge of the right of defendant No. 1 and does, since a long time, use to visit the Pareshnath Hill in Madhoobun, and on

several occasions made attempts to purchase the said hill but did not succeed. Now seeing the defendant No. 1 in straitened circumstances, the plaintiffs, under the influence of riches, have brought this suit against him on a false charge.

23. And that to omit the date of the cause of action in the plaint is opposed to the provision of law. The object of it is to avoid limitation as will be shewn.

Under such circumstances it is prayed that the plaintiffs' suit be dismissed and the costs of the defendant with interest be awarded.

I Rajah Sree Paresh Nath Singh, defendant No. 1, do declare that the contents of this written statement are true to the best of my knowledge and belief and what I have learnt from others, I believe them to be true. By the pen of Gouri Persad, manager and general mukhtear, dated Palgunj, the 9th December 1888.

Rajah Sree Paresh Nath Singh.

No. 1565.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

(APPELLATE CIVIL JURISDICTION.)

Present—

The Honorable JONES QUAIN PIGOT

AND

The Honorable WILLIAM MACPHERSON,

Two of the Judges of this Court.

Appeal from Oder No. 472 of 1888.

Mr. R. H. Baddam, one of the ... ... *Defendants, Appellant,*

versus

Rai Dhunput Singh Bahadur, Rai Bodh Singh Bahadur, Rai Buddree Das Bahadur, Baboo Heera Lal Johori, Baboo Surubisook Khootaree, all residents of Calcutta ... ... *Plaintiffs, Respondents.*

Upon reading on the part of the appellant his petition, and his affidavit affirmed on the 27th of December 1888, (copies whereof are hereunto annexed); and upon hearing Mr. C. P. Hill and Mr. Douglas White, Counsels, and with them Baboo.....
Taruck Nath Sen, Vakeels for the said appellants:—It is ordered that the respondents (Rai Dhunput Singh Bahadur, Rai Bodh Singh Bahadur, Rai Buddree Das Bahadur, Baboo Heera Lal Jahori, Baboo Surubisook Khootaree) do, whithin fourteen days from the service upon them of this Rule, show cause before this Court, why the Regular Suit No. 26 of 1888, instituted by them against the said appellant in the Court of the Subordinate Judge of Hazareebaugh, should not be withdrawn from that Court, and transferred either to this Court or to any other Court, as this Court may direct, and it is further ordered that copies of this Rule be forwarded to the Sheriff of Calcutta for service upon the said respondents; and that the said Sheriff do submit to this Court, his return of service with as little delay as possible, and further that a copy of this Rule be also forwarded to the said Sheriff for his information and guidance.

Dated this 31st day of December in the year of our Lord one thousand eight hundred and eighty eight.

By order,

Sheriff's Office, J. H. BELCHAMBERS,

Recd. 11th January 1889. *Deputy Registrar.*

Exhibit A referred to in the annexed affidavit of Mr. R. H. Baddam, sworn this 27th day of December 1888, before me.

J. H. BELCHAMBERS,
Commissioner.

R. H. Baddam
by
Taruck Nath Sen.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

CIVIL APPELLATE JURISDICTION.

In the matter of appeal from order in Regular Suit No. 26 of 1888.

Rai Dhunput Singh Bahadur, Rai Bodh Singh Bahadur, Rai Buddree Das Bahadur, Baboo Heera Lal Jahori, Baboo Surubisook Khootaree, all of Calcutta ... ... *Plaintiffs.*

and

Rajah Paresh Nath Singh, Zemindar of Palgunge, Mr. R. H. Baddam of Pareshnath Hill, District Hazareebaugh, ... *Defendants.*

Pending in the Court of the Sub-Judge at Hazareebaugh.

To the Honorable

SIR COMER PETHERAM KNIGHT,

Chief Justice and his companion Justices of the said Honorable Court.

The Humble Petition of R. H. Baddam, one of the Defendants,

SHEWETH,

That Your Petitioner Mr. R. H. Baddam, one of the defendants in the above suit, is the owner of a Tea Plantation and a manufactory for preparing lard on the Pareshnath Hill in the district of Hazaribagh, and the plaintiffs alleging themselves as the representatives of the Seetambaree Society, one of the sects of the Jain persuasion, worshipping at some of the temples on the said Hill.

2. That notwithstanding the said temples are owned and visited by pilgrims of other sects of the Jains as well by Hindus of different persuasions, the plaintiffs alleging themselves to be the representatives of one sect of the Jains only, on the 1st October 1888, instituted the above suit against your petitioner and Rajah of Palguage, the said defendant, Pareshnath Singh, proprietor of the Pareshnath Hill; and among other things they prayed for an order of ejectment against your petitioner from the lands occupied by him and for possession of the same by the plaintiffs and for a perpetual injunction against him from carrying on the manufacture of lard or any other trade offensive to the religious feelings of the Jains.

3. That on the 1st October 1888, the said plaintiffs applied for the issue of the said injunction and the learned Sub-Judge, on the same day, in the absence of your petitioner and without any notice whatever, or giving him an opportunity to show cause against the plaintiffs' prayers, granted an injunction, stopping the working of your petitioner's manufactory, thereby causing him great loss and damages and entailing upon him heavy liabilities.

4. That the manufactory is situated on a remote spur of the Hill, at least 2 miles from any of the Jain Temples and at least one mile and a half ($1\frac{1}{2}$) from the route used by the pilgrims, nor is it even visible from any of the roads used by the pilgrims or from the Temples—That your said Petitioner's Factory has been in operation since October 1887, and that pilgrims have been passing up to and down from the Temples as usual. Your said petitioner is informed and believes that the existence of such a Factory has not decreased the number of pilgrims, and that it has in no way interfered with their visiting the Hill or worshipping at the Temples—and at no time has there been any objections raised or complaints made by the said pilgrims—and that the statements made in the plaintiffs' petition for an injunction and the affidavit supporting this are absolutely false and imaginary.

5. That for years there was a sanitarium for British Troops situated in close proximity to the Temples, where cattle and other animals were daily slaughtered there for their food, and even at the present time, animals are daily killed by European travellers occupying the Government staging Bungalow, which is within a stone's throw of the principal Jain Temple dedicated to Pareshnathjee—moreover there is a number of villages on the Hill, inhabited by Sonthals, who habitually kill and consume animal food, and that no festival or ceremony can be held by them without the sacrifice or slaughter of pigs—which are kept and bred by nearly every inhabitant on the Hill. Further that several times a year the Hill is regularly hunted by thousands of visitors, when wholesale slaughter is indulged in, and therfore it is evident that the facts stated in the said petition and affidavit are wholly untrue.

6. That Your Petitioner Mr. R. H. Baddam made large advances for the supply of pigs in the surrounding districts, which owing to the injunction restraining him from carrying on the work of the factory, he was unable to take delivery of, forfeiting the advances so made by him as well as exposing himself to actions for Breach of Contract. Further that your petitioner Mr. R. H. Baddam was unable to altogether stop at once the delivery of pigs and a number was brought to the Factory which your said petitioner had to dispose of at enormous sacrifices. Moreover, further and heavy losses were incurred by your said petitioner's inability to carry out the arrangements for the disposal of the lard, bristles and skins.

7. That your said petitioner, to take advantage of the greater cheapness of food grains from the new and in-coming crops had made advances against the same which were likewise forfeited through his inability to fulfil the terms of the contracts entered into. Suffering thus present and material

loss besides prospective losses by having to buy from day to day food in an enhancing market to keep the present stock of pigs alive.

8. That your said petitioner had a large number of pigs fattened ready for killing and in different stages of preparation and that owing to the sudden action of the learned Sub Judge, he was unable to prevent a heavy mortality which your said petitioner would have obviated had he been given the usual legal notice of the application by the plaintiffs.

9. That your said petitioner had a staff of experts as well as ordinary labourers for the carrying on of the manufactory, which staff he is unable to dismiss owing to the speciality of the business, or to employ in any other capacity, thereby also incurring a further heavy loss.

10. That the Plaintiffs memorialised the Government of Bengal in May 1888, and in consequence thereof an order was issued by Colonel Garbett, the Deputy Commissioner and Sub Judge of Hazaribagh, on your said petitioner calling upon him to suspend operations pending further instructions from Government, whereupon your said petitioner protested against such order and on the 11th July, the Government of Bengal, after consulting the Advocate General, intimated to him that they were advised they could not legally interfere and that your petitioner "could only be restrained by his own lessor, and instructions were telegraphed to Colonel Garbett, the Deputy Commissioner and Sub Judge, to stop interfering with Your Petitioner's operations." The correspondence that took place in regard to this matter is annexed herewith.

11. That your said petitioner knows for a fact that these communications between the Government of Bengal, Colonel Garbett and your petitioner were made available to the plaintiffs and the plaintiffs opened negotiations with your said petitioner to remove the factory from the Hill. Further that after these negotiations had proceeded for a certain time and your said petitioner refused the very inadequate recompense offered by the plaintiffs,—the plaintiffs instituted the above suit and obtained exparte, from the learned Sub Judge, the injunction which your said petitioner prays may now be reversed.

12. That the application for an injunction was made on the 1st October 1888, and the order was passed upon it immediately issuing an injunction, which order was served upon your said petitioner at his residence on Pareshnath Hill after 5 P. M. on the 5th October 1888. That the Civil Courts at Hazaribagh closed for the Dusserah vacation on the same day and your said petitioner had no possible opportunity of taking any action in the matter till the re-opening of the Courts. Your said petitioner is informed and believes that the Court at Hazaribagh re-opened on or about the 10th November 1888. Your said petitioner came down to Calcutta for advice and left for Hazaribagh on the 11th November 1888, where he arrived at 6 o'clock on the evening of the 12th November 1888, and at 7 o'clock the same evening, Colonel Garbett, the Deputy-Commissioner and learned Sub Judge left Hazaribagh on inspection duty as your petitioner believes. Your said petitioner remained at Hazaribagh from the 12th to the 25th in daily expectation of the return

of the learned Sub Judge. On the evening of the November 25th at 5 P. M. the learned Sub Judge returned to Hazaribagh and on the following morning, your said petitioner filed his application. On the morning of the 26th November 1888, your said petitioner moved the learned Sub Judge to set aside the injunction on the grounds that such order was not passed after hearing both sides and ascertaining the real facts of the case and was not according to Law, and that the same was injurious to your said petitioner causing him a daily loss, more especially as his manufacturing season had commenced. That notwithstanding such representations the learned Sub Judge declined to withdraw the injunction issued by him.

13. That your petitioner being dissatisfied with the said order of the learned Sub Judge, dated 1st October 1888, granting the said injunction and the order dated 29th November last, refusing to set aside the said order for injunction, submitted an appeal to this Honorable Court.

14. That upon the facts disclosed in the said correspondence and the conduct of the learned Sub Judge, your said petitioner submits with alarm and apprehension that the learned Sub Judge, Colonel Garbett is embarrassed by the action of the executive Government and he is consequently no longer in a position to try the case impartially and to mete out even-handed justice. That the said suit is in its earliest stage, the written statement of the defendants was only filed on the 13th December Inst. and no evidence has been taken. Even the issues have not been framed by the Court below. It is desirable for the ends of justice that the said suit be transferred for trial to this Honorable Court. Therefore it is prayed that Your Lordships may be pleased to send for the records and fix an early date for the hearing of the said appeal from the said order and direct the Court below to suspend the injunction order until the disposal of the said appeal and to stop all incidental and further proceedings in the said suit till the disposal of this petition and to transfer the suit to the file of this Honorable Court or pass any other order as to Your Lordships may seem fit and proper.

And your petitioner as in duty bound shall ever pray.

List of Documents filed.

1. Letter from Col. C. Garbett, dated 29th June 1888.
2. „ „ Col. C. Garbett, Depy. Commr., Hazaribagh, dated 25th May 1888, No. 305 C. R.
3. Copy of affidavit by Goolab Chund Panday for plaintiffs.
4. Letter from C. W. Carlyle, Offg. under Secty. Govt. of Bengal, dated 11th July 1888, No. 2972 J.

True Copy,
J. H. BELCHAMBERS,
Deputy Registrar.

Affidavit.

To be used on behalf of the Defendant.

In the matter of the appeal from order in Regular Suit No. 26 of 1888.

Rai Dhunput Singh and 4 others ... *Plaintiffs,*

versus

Mr. R. H. Baddam and another ... *Defendants.*

Pending in the Court of the Sub Judge at Hazaribagh.

I Rawson Hart Baddam, son of General H. M. Baddam, resident of Pareshnath Hill, in the district of Hazaribagh, at present of No. 37 Canning Street in the town of Calcutta, do hereby make oath and say :—

1. That I am one of the defendants in the aforesaid suit.

2. That I am fully acquainted with the facts of the said suit.

3. That the facts stated in the annexed petition, Exhibit A. are true except such facts as I have stated upon information and belief and I believe them to be true.

R. H. BADDAM.

Prepared in my office.
Tarak Nath Sen.
No. 244

Sworn by the deponent Mr. R. H. Baddam, this 27th day of December 1881, before me.

J. H. BELCHAMBERS,
Commissioner.

True Copy,
J. H. BELCHAMBERS,
Deputy Registrar.

477 Presented 27-12-88. Md. Aollah.

No. 472 of 1888.

Filed 27-12-1888.
B. B. Banerjee.

R. H. Baddam by Tarack Nath Sen.

In the High Court of Judicature at Fort William in Bengal.

(Civil Appellate Jurisdiction.)

Rai Dhunput Singh Bahadoor, Rai Boodh Singh Bahadoor, Rai Budree Dass Bahadoor, Baboo Heera Lal Jahoree, Baboo Surubsook Khootaree, all residents of Calcutta, ... *Plaintiffs.*

versus

Rajah Paresh Nath Singh and Mr. R. H. Baddam ... ... *Defendants.*

That the defendant Mr. R. H. Baddam, being dissatisfied with the order passed by the Sub-Judge of Hazaribagh, dated the 1st October 1888 and 29th November 1888, granting an injunction, begs to prefer this appeal to this Honorable Court against the abovementioned plaintiffs on the following among other reasons :—

1. For that even on the face of the plaint it is evident that the manufactory existed for a considerable time before the institution of the suit, the Court below should not have made an order granting an injunction at all.

2. For that the petition praying for an injunction does not sufficiently disclose facts of such an urgent nature as would justify any Court granting an exparte order.

3. For that the slaughtering of the pigs for the purposes of manufacturing lard is carried on in such a place and manner as not to be observable by any person outside of the Factory itself. And as such it cannot possibly offend the religious prejudices of the Jain Pilgrims. That Your petitioner's factory has been in operation since October 1887, and that Pilgrims have been passing up to and down from the Temples as usual, that the existence of such a factory has not decreased the number of Pilgrims and that it has in no way interfered with their visiting the Hill or worshipping at the Temples.

4. For that the place where the manufactory is situated cannot possibly be termed as sacred by the plaintiffs, being so far away from the Jain temples, the Court below is in error by holding it to be otherwise.

5. For that the order of the Court below being in restraint of a particular trade and calling is against public policy and unlawful. Therefore it is prayed that Your

Lordships may be pleased to send for the records and reverse the order, dated 1st October 1888, granting an injunction and the order, dated 29th November 1888, refusing to set aside the order for injunction of the Court below, or pass any other, order as to Your Lordships may seem fit and proper.

And Your petitioner as in duty bound shall ever pray.

Compd.
Azhurali and M. H.

In the Court of the Deputy-Commissioner, Sub-Judge, Hazaribagh.

Regular Suit No. 26, 1888.

Rai Dhunput Singh and others ... ... *Plaintiffs.*

versus

Raja Pares Nath Sing ... } ... ... *Defendants.*
Mr. R. H. Baddam ... }

Upon motion made into this Court by Baboo Hari Churn Mitra and Madhova Nund Bysack, Pleaders for the above-named plaintiffs, and upon reading the petition of the said plaintiffs in this matter, filed this day, and upon hearing the affidavit of Golap Pandey in support thereof, this Court doth order that an injunction be awarded to restrain the Defendant Mr. R. H. Baddam from carrying on the manufacture of hog's lard or any other trade offensive to the religious feelings of the Jain Setumbary Society until the hearing of this cause or until the further order of this Court.

Dated this 1st October 1888.

(Sd.) C. H. GARBETT,
Dy. Commissioner,
Sub-Judge.

Compd.
AZHURALI AND
MUZZAFER HOSSAIN.

Regular Case No. 26 of 1888.

Rai Dhunput Singh ond others ... ... *Plaintiffs.*

versus

R. H. Baddam and another ... ... *Defendants.*

In the Court of the Deputy Commissioner of Hazaribagh.

HUMBLY SHOWETH,

That the plaintiffs having instituted the above suit on the 1st October 1888, applied for the issue of an injunction against your petitioner the very same day, and in accordance with their prayer an injunction was immediately issued stopping all the works of the petitioner. This injunction reached the petitioner on or about the 6th idem, the very day the Civil Courts closed for a long vacation. Suddenly and without any previous notice stopping all works of your petitioner and causing him immense loss, damages

and injury and liability. He is interdicted from doing anything by the injuction which is of a very extensive scope and nature and your petitioner begs to urge that such injunction should not have been issued without giving him a notice to show cause against the issue thereof and without giving him time to wind up gradually and settle things in a proper way so as to reduce the amount of loss to a minimum. Your petitioner further begs to urge that under the circumstances of the case, the notice to which he is entitled to, under section 494 C. P. Code should not have been dispensed with. That your petitioner's business is quite out of view and long off and away from the pilgrim places. That the injunction is causing daily heavy loss to the petitioner.

Your petitioner therefore begs to pray that the injunction be discharged under section 496 C. P. Code.

And Your petitioner as in duty bound shall ever pray.

(Sd.) JADU NATH MUKERJEE,
Vakeel.

(Sd.) R. H. BADDAM,
one of the Defendants.

The injunction to discontinue slaughtering pigs for the purpose of manufacturing lard on Pareshnath, a Hill esteemed sacred by the Jains, may itself be possibly causing loss to petitioner, but I fail to see, nor has it been made clear to me, how the failure to serve petitioner with the required notice under section 494 Civil Procedure Code can have had anything to do in causing loss. The injunction was issued without notice as the matter was considered urgent in connection with offending religious prejudices and causing rioting. If petitioner has sustained damage, he will be able to recover, whatever he may be justly entitled to, from the parties at whose instance the injunction was issued. I refuse the application.

November 29-1888.

(Sd.) C. H. GARBETT,
Deputy-Commissioner.

Compd.
AZHURALI AND
M. H.

IN THE HIGH COURT OF JUDICATURE
AT FORT WILLIAM IN BENGAL.

(CIVIL APPELLATE JURISDICTION.)

The 12th February 1889.

Present :—

The Honorable JONES QUAIN PIGOT,

AND

The Honorable HENRY BEVERLEY,

Two of the Judges of this Court.

Appeal from Order, No. 472 of 1888.

Appeal against the orders of Colonel C. H. Garbett, Deputy Commissioner and Subordinate Judge of Zillah Hazaribagh, dated respectively 1st of October and the 29th of November 1888.

R. H. Baddam ... ... { *One of the Defendants, Appellant.*

versus

Rai Dhunput Singh Bahadoor, Rai Boodh Singh Bahadoor, Rai Budri Dass Bahadoor, Hira Lall Johooree and Surubi Sook Khootaree,... { *Plaintiffs, Respondents.*

For Appellant :—Mr. Advocate General G. C. Paul and Mr. Hill *Counsel*, and Baboo Taruck Nath Sen and Baboo Dwarka Nath Mukerjee, Vakeels.

For Respondents:—Mr. Woodroffe and Mr. Bonerjee *Counsel*, and Dr. Rashbehary Ghose, Baboo Dwarka Nath Chuckerbutty and Baboo Madhabanund Bysack, Vakeels.

This is an appeal from an order made by Colonel Garbett Deputy Commissioner of Hazaribagh on the 1st October 1888, by which order the defendant Mr. R. H. Baddam was restrained from carrying on the manufacture of hog's lard or any other trade offensive to the religious feelings of the Jain Setumbari Society "until the hearing of the case or until the further order of this Court."

The question for decision before us on the appeal is quite simple and free from either difficulty or complication ; but we think it desirable, having regard to the nature of the case, to dwell upon the circumstances of it at greater length than any legal importance that the case itself has would perhaps warrant.

The suit was instituted by five gentlemen professing to represent that division of the Jain Community which, as we understand it, is called the Jain Setumbari Society, and the plaintiffs complain that they being the owners of

the sacred lands described as the Pareshnath Hill and the plain below, the first defendant has wrongfully and improperly granted to the second defendant Mr. Baddam, a lease of two thousand acres, or English biggahs, out of the lands of the said Hill and the plain below, which under the circumstances stated in the plaint, they say the first defendant had no right to do, and they claim ejectment against the second defendant from the lands occupied by him, and possession of the same by them, the plaintiffs. That portion of the claim however does not relate to the subject matter of this appeal. They also claim in the plaint the injunction which they have obtained pending the suit, upon the ground that the second defendant has established a manufactory of hog's lard in those 2,000 acres, not only thereby trespassing on the lands belonging to the sect, but desecrating the place of worship, devotion and pilgrimage, creating a nuisance, and wounding the religious feelings of the sect. Now, in no portion of the plaint, and in no portion of the surprising affidavit upon which the order for an injunction was granted, are any acts of the defendant specified such that it could be pronounced of them that in themselves they are acts of the character of, or constituting, a nuisance. In no part of the plaint is it stated or explained in what way the defendant's conduct in carrying on this manufactory wounds, or is calculated to wound, the religious feelings of the Jains, or interfere unlawfully with any right enjoyed by them. So that neither by a description of the character of acts alleged on defendant's part, nor by any special allegation making out that with respect to the Jains the defendant's conduct has been of an actionable character is there the slightest statement from which anything in the nature of a cause of action can be extracted. We are far from desiring to have it implied from what we have just said that the acts of the defendant in carrying on their manufactory could under the circumstances be of such a character as to give rise to a cause of action merely because they wounded (supposing that in fact they did wound) the religious feelings of the Jain sect. On the other hand, we by no means desire to suggest that conduct, actually and improperly interfering with the public worship of a community of Her Majesty's subjects might not under certain circumstances give rise to a cause of action. It is enough to say that in the proceedings before us there is no trace of such an assertion of right enjoyed, or of wrong done, as in our opinion to justify the granting of an injunction.

We must take leave to say this that the power of granting an injunction is one which has been perhaps a little lavishly bestowed upon the courts in the mofussil in this country. It is a tremendous power, and one which the superior courts must carefully guard themselves from exercising hastily or without valid grounds. And this is not the first occasion by any means in which the exercise of the power of granting an injunction, which has been conferred upon the smaller courts in the mofussil has led to results by no means satisfactory. Here a business, for aught we know, a valuable business, since the 1st October, suddenly and peremptorily stopped until this the 12th of February,

and stopped, as we must now pronounce it in this Court to have been without the slightest legal foundation laid before the Court.

The second ground upon which we make this order is this, that whatever the case as to the existence of a legal right in the plaintiffs may have been, supposing that the statements in the plaint had been such as to show, if uncontradicted, that the plaintiffs were entitled to an injunction, the injunction ought not to have issued in the absence of the defendant without strong and grave reasons. The observation of Sir Lawrence Peel in the case of Freeman *versus* McArthur in II Taylor and Bell's Reports, page 25, are applicable to the case. "Such an injunction on the application of one party and without previously giving to the person to be affected by it the opportunity of contesting the propriety of its issuing, is a deviation from the ordinary course of justice, which nothing, but the existence of some imminent danger to property if it be not so granted, can justify." A case therefore "of irremediable mischief impending must be made out." By this is certainly not meant necessary and "inevitable destruction, but great and serious danger not capable of being averted, probably, if delay be interposed." There was nothing of that sort here. We are not at liberty perhaps to refer to what has been before us, and to what will shortly again be before us, namely, the correspondence relating to the Rule to be heard presently, and we must avoid the irregularity of referring in detail to that correspondence, but it is clear and has been admitted before us in this appeal, that for months before this injunction was applied for or granted, the parties connected with the Jain community were fully aware of what the defendant was doing or was about to do.

We must express our regret that the officer who granted this injunction had not before him, when the application to dissolve the injunction was made, the legal considerations which ought to have then guided him. We should be very sorry, in expressing our disapproval of the course taken by him, to say anything whatever in disparagement of that officer. He plainly does not understand the character of the jurisdiction he was exercising, and he is not to be blamed for that, a jurisdiction, originally, and perhaps properly, belonging only to Superior Courts possessed of legal knowledge and experience, is imposed on courts in the mofussil which sometimes share with the victims of its exercise the inconvenience of its being so imposed on them. It would be unfair to blame such tribunals much, if they do sometimes go astray in the use of it. But we must examine the course taken by the Deputy Commissioner. When applied to on the ground that under Section 494 of the Code of Civil Procedure, notice should have been given, he says, "I fail to see, nor has it been made clear to me how the failure to serve petitioner with the required notice under Section 494 of the Civil Procedure Code can have had anything to do in causing loss. The injunction was issued without notice as the matter was considered urgent in connection with offending religious prejudices and causing rioting." In truth, the Deputy Commissoner, we do not say unnaturally, but very erroneously applied the

full powers of an injunction for purposes relating rather to his executive than to his judicial functions, not perhaps quite correctly even had he been acting in his executive capacity, because there is not one word in the proceedings from first to last which could properly lead him, whether in his capacity of Colonel Garbett, Deputy Commissioner, or in his capacity of Subordinate Judge of this district, to come to the conclusion that there was any danger of a riot. Not one word is there in the proceedings from first to last indicative of such danger, save what is contained in the judgement which we have just read.

We have only further to point out the extreme stringency of the terms of Section 494, which by enactment lays down the rule always followed, before its enactment, by courts possessing (and understanding) this sort of jurisdiction. "The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party." Ordinary justice requires it save in the exceptional case referred to by the section.

As regards Section 494, we should, under the circumstances have entertained (we do not say what order we should have made on it) an application, (had any been made to us) under this section, under which damages against the persons who have obtained, in the words of the section, an injunction on insufficient grounds, may be had. However the defendant does not wish to avail himself of this section.

We refer to it because it is desirable to publicly point out the serious character of this procedure, but we make no order for an inquiry into damages.

We allow the appeal with costs-bearing fee twenty gold mohurs.

Compared.

True Copy,
R. BELCHAMBERS,
Deputy-Registrar,
15-3-89.